

No. 83-731

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In the Supreme Court of the United States

OCTOBER TERM, 1983

ADOLF KIZAS, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT*

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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The judgment of the court of appeals in this civil case was entered on April 26, 1983 (App., *infra*, 1a-2a), and no petition for rehearing was filed.¹ The time within which to

¹Petitioners assert, citing Pet. App. E, that they filed a petition for rehearing with a suggestion for rehearing en banc that was denied on August 5, 1983 (Pet. 2). In fact, that appendix discloses that what was denied on August 5 was their motion for leave to file a suggestion for rehearing en banc in excess of the page limitation (Pet. App. 103a).

On June 10, 1983, the last day for filing a petition for rehearing in this case (see D.C. Cir. R. 14), petitioners moved for permission to file a petition for rehearing and suggestion for rehearing en banc in excess of the page limitation provided in the court of appeals' Rule 14(a)(2). Although that Rule provides that such motions are not favored, and will be granted only "for extraordinary and compelling reasons," petitioners neither sought an extension of time from this Court for filing their certiorari petition, nor asked the court of appeals for expedited consideration of their motion for permission to exceed the page limitation, so that the court of appeals would act before their certiorari time

file a petition for a writ of certiorari was not extended; it therefore expired on July 25, 1983. See 28 U.S.C. 2101(c). The petition for a writ of certiorari was not filed until November 3, 1983, and is therefore jurisdictionally out of time. *Department of Banking v. Pink*, 317 U.S. 264 (1942).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

NOVEMBER 1983

expired (see D.C. Cir. R. 6(i)). Nor, when the court of appeals denied them permission to file a rehearing petition exceeding the page limitations, did they seek additional time within which to file a proper rehearing petition, as they possibly could have done under Rule 14(a)(1). Petitioners instead apparently simply assumed that the court of appeals' denial of permission to file a rehearing petition that did not conform to its Rules was the equivalent of the denial of a properly filed rehearing petition. It is not. Cf. *Bowman v. Loperena*, 311 U.S. 262, 266 (1940) (time to seek review in this Court does not run from date of denial of motion to file untimely rehearing petition).

APPENDIX

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 82-1477

September Term, 1982

Adolph Kizas, et al.

Civil Action No. 78-00983

v.

United States Court of Appeals

William H. Webster, et al., for the District of Columbia Circuit
Appellants

FILED APR 26, 1983

No. 82-1511

GEORGE A. FISHER

Adolph Kizas, et al.,
Appellants

v.

William H. Webster, et al.

Appeals from the United States District Court for the Dis-
trict of Columbia

Before: Wald and Ginsburg, Circuit Judges, and Bazelon,
Senior Circuit Judge

J U D G M E N T

These causes came on to be heard on the records on appeal from the United States District Court for the District of Columbia, and were argued by counsel. On consideration of the foregoing, it is

ORDERED and ADJUDGED, by this Court, that the judgment in No. 82-1477 for the employees on the "takings" claim is reversed and the District Court is directed to enter judgment for Appellant Webster, et al., and in No. 82-1511

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the judgment dismissing the employees' discrimination claim is affirmed, all in accordance with the opinion of this Court filed herein this date.

Per Curiam
For the Court

/s/ George A. Fisher

George A. Fisher
Clerk

Date: April 26, 1983.

Opinion for the Court in parts I and II filed by Senior Circuit Judge Bazelon. Opinion for the Court in part III filed by Circuit Judge Ginsburg.